IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

CRP.No. 523 of 2007()

AGAINST THE ORDER IN IA 5867 2005 IN
OS.1079/2005 of PRL.SUB COURT,THRISSUR

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REVN. PETITIONER: PETITIONER/PLAINTIFF

V.C.ARAVINDAKSHA MENON,
S/O.P.K.NARAYANA PANICKER, AGED 53 YRS., HOUSE NO.31,
PREM NIVAS, KAVERI NAGAR,
SREERANGAM, TIRUCHIRAPPALLY, TAMIL NADU

BY ADV. SRI.R.SATISH KUMAR

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. MADHAVIKUTTY AMMA,
W/O.P.K.NARAYANA PANICKER,
SUKHADA, TEMPLE ROAD, POOTHOLE, TRICHUR,
REPRESENTED BY GUARDIAN AND DAUGHTER
SARASWATHY AMMA, SUKHADA, TEMPLE ROAD,
POOTHOLE, TRICHUR.

2. SARASWATHY AMMA,
D/O.MADHAVIKUTTY AMMA, SUKHADA, TEMPLE ROAD,
POOTHOLE, TRICHUR.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

C.R.P. No. 523 OF 2007 G

Dated this the 20th June, 2007.

O R D E R

This civil revision petition is preferred against the order of the Principal Subordinate Judge, Thrissur in I.A.5867/05. It is an application filed by the plaintiff to appoint the second defendant as the guardian of the first defendant. The plaintiff and the second defendant are the children of the first defendant and the controversy is with respect to the properties. It is submitted that the first defendant is aged 93 years and she had lost her balance of mind and therefore is unable to represent herself and so the second defendant has to be appointed as guardian. The court instead of conducting an enquiry as to the personal satisfaction and conscience of the court relied upon some previous statement made by the party and an affidavit and held that appointment of a guardian is not necessary. When an application is filed under Order XXXII Rule 15 CPC it contemplates an enquiry. It is for the limited purpose of finding out whether the person is capable of defending the claim against her by herself. For that ordinarily such persons are summoned before the court, the court used to put questions and satisfy itself about the mental capacity and in case of inability to arrive at a

conclusion, on the basis of the questioning, direct the parties to adduce medical evidence to satisfy the court that whether one is capable of representing oneself or needs a guardian to be appointed in the matter. The learned Subordinate Judge, instead of resorting to that had relied upon the previous statements and had arrived at a decision that appointment of a guardian is not necessary. This is not strictly in conformity with law and, therefore, the order requires interference and liable to be set aside. Therefore, the order under challenge is set aside and the learned Subordinate Judge, Thrissur is directed to conduct an enquiry as contemplated under Order XXXII Rule 15 CPC and dispose of the petition in accordance with law, after hearing both sides and after permitting both sides to adduce evidence in support of the respective contentions. The learned Subordinate Judge shall dispose of the matter within a time limit of two months. C.R.P is disposed of accordingly.

M.N. KRISHNAN
Judge

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